HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4702 of 1996

Petitioners	1.	M. K. Agarwal, S/o Late Shri H. L. Agarwal, aged about 34 years, R/o Mohan Nagar, Near Care Clinic, Durg (C.G.).
	2.	Tapan Agarwal, S/o Shri B. K. Agarwal, aged about 35 years, R/o 17/B, Nehru Nagar West, Bhilai (C.G.).
	Versus	
Respondents	1.	State of Madhya Pradesh, through the Secretary, Department of Housing and Environment, Government of Madhya Pradesh, Vallabh Bhawan, Bhopal (M.P.).
	1-A.	State of Chhattisgarh, Through Secretary, Nagriya Prashasan and Vikas Department, D.K.S. Bhawan, Raipur (C.G.)
	2.	Special Area Development Authority, through its Chairman, Bhilai, District-Durg (C.G.).
	3.	Chief Executive Officer, Special Area Development Authority, Bhiali, District- Durg (C.G.)
	4.	Municipal Corporation, Bhilai, through its Commissioner, District- Durg (C.G.).
	5.	State of Madhya Pradesh, through the Secretary, Department of Local Self Government Department, Vallabh Bhawan, Bhopal (M.P.).
	6.	Satyendra Singh, Assistant Engineer, Office of the 'SADA' (now Municipal Corporation, Bhilai) on deputation to Rajdhani Pariyojna, Bhopal (M.P.).
	7.	C. S. Tamrakar, Assistant Engineer, Municipal Corporation, Bhilai, District-Durg (C.G.).

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Petitioners by Shri Ajay Shrivastava, Advocate.

Respondent No. 1-A by Shri Pankaj Shrivastava, Panel lawyer.

Respondents No. 2, 3 and 4 by Shri R. M. Solapurkar, Advocate.

ORAL ORDER

(5th January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

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1. The petitioners along with Shri Satyendra Singh (Respondent No.6) and Shri C. S. Tamrakar (Respondent No.7) were appointed as ad-hoc Assistant Engineer in the establishment of Special Area Development Authority, Bhilai, District- Durg. The petitioner No.1 was appointed on 14.6.1985, petitioner No.2 was appointed on 1.7.1987 and respondents No. 6 and 7 were appointed on 2.5.1988.

2. The petitioner No.1 filed M.P.No. 3672/88 in the High Court of Madhya Pradesh at Jabalpur challenging the order of regularization of the employees namely Shri Satyendra Singh and Shri Samir Zeorge, whereby the petitioner was not regularized. The High Court vide judgment and order dated 7.2.1995 disposed of the petition holding as under:-

> "Having considered the arguments of the learned counsel for the parties I am of the view that the appointment of the petitioner was not in accordance with law nor that of the respondents No. 4 and 5. No direct appointment could have been made without there being proper procedure adopted for selection. No proper procedure was adopted by advertising the posts according to the known procedure. Even for appointment to be made by the S.A.D.A. the rules are contained in Part IV and V no such procedure was followed. Section 73 does not in any way help the respondents in order to justify the appointment of the respondents No. 4 and 5."

3. Accordingly the appointments of the petitioner as well as Shri Satyendra Singh and Shri Samir Zeorge, who were respondents No. 4 and 5 in M.P.No. 3672/88 were found not in accordance with law. In para – 8 of the judgment and order dated 7.2.1995 the respondents were directed to adopt the procedure of selection as may be permissible under the existing Rules for selection by direct recruitment and also given opportunity to the Respondents No. 4 and

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5 as also the petitioner to compete. Pursuant to the judgment and order dated 7.2.1995 passed by the High Court of Madhya Pradesh in M.P.No. 3672/88 the respondent No. 3 vide his order dated 1.1.1996 Annexure P/7 cancelled the order of regularization dated 12.5.1995, regularizing the services of the petitioners on the post of Assistant Engineer.

4. Shri Shrivastava, learned counsel appearing for the petitioners submits that the Respondents No. 6 and 7 namely Shri Satyendra Singh and Shri G.S.Tamrakar (mentioned in the petition as 'C.S.Tamrakar') were also de-regularized vide order dated 31.7.1995 (Annexure P/9). The respondent No.6 was a party-respondent in M.P. No. 3672/88. The respondents No. 1 to 3 vide order dated 11.2.1999 (Annexure P/10) cancelled the earlier order dated 31.7.1995 whereby the order of regularization was cancelled.

5. Learned counsel Mr. Solapurkar, appearing for the respondents No. 2, 3 and 4 contends that the order dated 31.7.1995 (Annexure P/9) canceling the order of regularization of similarly situated officers was cancelled vide order dated 11.2.1999 on considering their representations. Learned counsel for the petitioner submits that this amounts to discrimination in view of the fact that the order canceling regularization of the similarly situated officers was later on cancelled and the persons who were de-regularized, were regularized vide order dated 11.2.1999 and the petitioners were not considered for regularization.

6. After having heard learned counsel for the parties and perusing the records, I am of the view that the order dated 11.9.1999 (Annexure P/10) was passed on consideration of the representations made by the concerned officers. At this stage learned counsel for the petitioners submits that the petitioners be also permitted to make

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representations and the respondents No. 1 to 3 and 4 be directed to consider their representation on the same line, as has been done in the case of other similarly situated persons. Learned counsel appearing for the respondents No. 2 to 4 have no objection to the prayer of making representation by the petitioners.

7. In the facts and circumstances of the case, the petitioners are granted liberty to make a representation to the State Government as well as other concerned authorities for appropriate relief, in view of the facts that other similarly situated officers have been regularized.

8. For the reasons stated above, the petition stands disposed of with a direction to the respondents No. 1, 1-A, 2, 4 and 5 to consider and decide the representation of the petitioners in accordance with law within a period of three months from the date of receipt/production of a copy of this order. No order as to costs.

Certified copy, as per Rules.

Sd/-
SATISH K. AGNIHOTRI
Judge

Thakur